Charles Ng, Suzanne Simmons
DPR Lake City CC Lease 2013 ORD
May 28, 2013
Version #1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117977

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into a lease agreement with the North Seattle Chamber of Commerce for the purpose of providing recreational and community programs to the public at the City of Seattle's Lake City Community Center.

WHEREAS, the Seattle Lake City Lions Club built the original Lake City Community Center building in 1955 to create recreational opportunities for youth; and

WHEREAS, Ordinance 92885, adopted on May 5, 1964, authorized the Seattle Department of Parks and Recreation (Parks) to accept the Lake City Community Center (Center) and adjacent property as a gift from the Lions Club with the condition that improvements would be made to the building so that the facility could be used as a recreation center for the public; and

WHEREAS, in 1980, Parks expanded the Center to its current size of 15,000 square feet at a cost of $70,000, using King County Forward Thrust Bond funds; and

WHEREAS, Parks contracted with the Lake City Community Center, Inc. (LCCCI) to provide recreational and community programming services to the public at the Center from 1965 to 2012; and

WHEREAS, the Lease Agreement with the LCCCI expired on January 15, 2013 and Parks conducted a Request for Proposals (RFP) process pursuant to which the North Seattle Chamber of Commerce (NSCC) was selected as the operator to provide recreational and community programming services to the public at the Center; and

WHEREAS, NSCC will be providing ongoing recreation and community programming services to the public; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation (Superintendent) is authorized to execute, for and on behalf of the City of Seattle, a Lease Agreement with the North Seattle Chamber of Commerce, in substantially the form attached hereto as Attachment 1, with

additions, modifications, or deletions as the Mayor or Superintendent deems to be in the best interest of the City.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment:
Attachment 1: Lease Agreement between the City of Seattle, Department of Parks and Recreation and the North Seattle Chamber of Commerce

Attachment 1

LEASE
Between
THE CITY OF SEATTLE
DEPARTMENT OF PARKS AND RECREATION
And
THE NORTH SEATTLE CHAMBER OF COMMERCE

THIS LEASE ("Lease") is entered into this _____ day of _____, 20____, by and between **THE CITY OF SEATTLE** ("City"), a municipal corporation of the State of Washington, acting by and through its Department of Parks and Recreation ("Parks") and the Superintendent thereof ("Superintendent"), and the North Seattle Chamber of Commerce ("Lessee"), a Washington non-profit Corporation, acting by and through its Board of Directors, organized under the laws of the State of Washington (collectively, the "Parties").

AGREEMENT

IN CONSIDERATION of the mutual covenants contained herein, City and Lessee covenant and agree as follows:

1. **Lease Data; Exhibits**. The following terms shall have the following meanings, except as otherwise specifically modified in this Lease:

1.1 Premises. All interior spaces including the halls, all rooms, and kitchen of the Lake City Community Center building ("Building") located at 12531 28th Avenue N.E., Seattle, Washington 98125.

1.2 License. The right to use parking areas, parking garage, and walkways in common areas adjacent to the Premises and accessible to the public.

1.3 Commencement Date. The date of execution of this Agreement by both Parties.

1.4 Expiration Date. Five (5) years after execution of this Agreement, at 11:59 pm on December 31, 2017. This Agreement includes one five (5) year extension at the discretion of the Superintendent.

1.5 Rent, Additional Charges, and Reporting Requirements.

1.5.1 For years 1 and 2 of the lease, Lessee shall pay an annual fee of $500.00 to the City, in quarterly installments of $125.00 each. The first and second installments shall be due no later than June 30, 2013. For years 3-5 of the lease, Lessee shall pay an annual fee of $1,000.00 to the City, in quarterly installments of $250.00 each. Starting in 2015, each

Attachment 1

installment of the new rate shall be due no later than 30 days after the end of each calendar quarter.

1.5.2 With each quarterly rent installment, Lessee shall submit, on forms approved or provided by Parks, a report summarizing the status of the activities, services, and programming outlined in Exhibit B to Attachment1, and a quarterly budget report.

1.5.3 Whether or not so designated, all other sums due from Lessee under this Lease shall constitute "Additional Charges," payable when specified by this Lease.

1.5.4. Leasehold Excise Tax. In addition to the Rent, Lessee shall pay all Leasehold Excise Tax (LET) on Lessee's interest in this Lease and any leasehold interest deemed to have been created thereby under RCW 82.29A. As of the Commencement Date of this Lease Agreement, the applicable LET rate is 12.84% of Rent, which rate and amount is subject to change from time to time.

1.6 Permitted Use. The City hereby grants to Lessee, the right to manage and operate on behalf of the City, the Premises. Lessee shall use the Premises as a Community Center for public purposes, as a meeting and recreational and community program facility open to and available for public use under the conditions described herein. Lessee shall not use the Premises for any other purpose or make any other use of the Premises inconsistent with the foregoing described purpose without the consent of Parks.

1.7 Notice Addresses. All payments shall be delivered to:

Seattle Department of Parks and Recreation
Contracts Administration and Support Office
ATTN: Manager
800 Maynard Ave S, 3rd Floor
Seattle, Washington, 98134

Or to such other address as the Superintendent shall direct.

1.8 To Lessee:

Lake City Community Center
c/o North Seattle Chamber of Commerce
Attn: Executive Director
12531 28th Avenue N.E.
Seattle, Washington 98125
Phone (206) 363-3287

Attachment 1

1.9 Exhibits. The following exhibits are made a part of this Lease:

Exhibit A - Legal Description
Exhibit B – Recreation Activities & Programming

2. **Premises**.

2.1 Grant. City hereby leases to Lessee and Lessee hereby leases from City those certain premises referenced in Section 1 (the "Premises"), which are located on the real property described in Exhibit A.

2.2 Condition. City leases the Premises and Lessee accepts the Premises in their "as is" condition.

2.3 Common Areas. Subject to the City's operational requirements, Lessee shall have access to and non-exclusive use of common areas and public spaces, which shall include parking areas and walkways adjacent to the Premises ("Common Areas").

2.4 Alterations. City, in its discretion, may increase, decrease or change the number, locations and dimensions of any hallways, lobby areas, Common Areas and other improvements that are not within the Premises. Such increase, decrease, or change shall not materially interfere with Lessee's business as permitted in Subsection 1.6, Permitted Use. City reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to the Premises or to other parts of the Building in areas above the suspended ceiling surfaces, below the floor surfaces, within the walls and elsewhere in the Building; (ii) to alter or expand the Building; and (iii) to alter, relocate or substitute any of the Common Areas. The Department reserves the right to close the Premises, or any portion thereof for making repairs or improvements. The Department will endeavor to give Lessee reasonable notice in advance of any such closure. The Department may close the Premises or any portion of the Premises without notice, in case of emergency.

3. **Lease Term.**

3.1 Initial Term. This Lease shall be for a term ("Lease Term" or "Term") beginning on the Commencement Date specified in Subsection 1.3 and ending on the Expiration Date specified in Subsection 1.4, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2.

3.2 Extended Term. Parks shall have the option to extend this Lease for up to one (1) successive individual extended term of five (5) years. Parks may extend the Lease Term to include any Extended Term by giving Lessee written notice of its intention to do so at least

Attachment 1

ninety (90) days prior to the beginning of the Extended Term. As used in this Lease, the "Lease Term" means the original term commencing on the Commencement Date specified in Subsection 1.3 and ending on the Expiration Date specified in Subsection 1.4, and any and all Extended Terms established by Parks hereunder.

4. **Annual Rent**.

4.1 Rent Commencement Date. Commencing January 1, 2013 ("Rent Commencement Date") Lessee shall pay to City at the address and to the account specified by City, without notice or demand or any setoff or deduction whatsoever, in lawful money of the United States (a) the amount of quarterly Rent specified in Subsection 1.5 prior to January 15, April 15, July 15, and October 15 each year; and (b) Additional Charges as and when specified elsewhere in this Lease, but if not specified, then within ten (10) days after written demand. Rent and, if appropriate, as reasonably determined by City, Additional Charges shall be prorated on a daily basis for any partial quarter within the Lease Term, and for any partial initial quarter in the Lease Term shall be paid on the first day of the Lease Term.

5. **Late Charge; Interest**. If Lessee fails to pay the City any sum when due, such amount shall bear interest at the rate of 12% per annum from the date due until the date paid.

5.1 Returned Check, Insufficient Funds. If any payment or check for payment is returned for insufficient funds, Lessee shall owe as an administrative charge an additional $20.00, or such larger sum as may be established by ordinance.

6. **Lessee's Operations**.

6.1 Use of Premises. Lessee shall use the Premises only for the Permitted Use. As City's willingness to enter into this Lease with Lessee was predicated, in part, on the nature of Lessee's business, and the compatibility of such business with the use of the Premises, and Lessee providing the recreational activities and programming to the public outlined in Exhibit B, Lessee shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without City's prior written consent. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and Common Areas as City, from time to time, may promulgate. In adopting newly promulgated rules and regulations, the City shall make reasonable efforts to craft such new rules in a manner as will not materially interfere with Lessee's business for the Permitted Use. Lessee shall maintain the Premises in a clean, orderly and neat fashion and to a standard established for other similar Parks properties (provided that Lessee shall not be responsible for maintaining those portions of the Premises that are City's responsibility to maintain under terms of this Lease), permitting no objectionable odors to be emitted from the Premises and shall neither commit waste nor permit any waste to be committed thereon. Lessee shall not permit any accumulation

Attachment 1

of trash on or about the Premises. Lessee shall not create or contribute to the creation of a nuisance in or near the Premises. The Lessee must also perform the following requirements:

6.1.1 The Lessee is authorized to charge fees for the use of the Premises, equipment and supplies consumed or used by the public as set forth on a published fee sheet which shall be prepared by Lessee and approved by the Superintendent.

6.1.2 The Lessee is authorized to use the Premises for the carrying out of its board meetings and may permit the use of the Premises for regular or special meetings of its committees and subcommittees, and may permit its use for fund raising activities supporting the overall mission of the Lessee without paying a rental fee.

6.1.3 The Lessee may permit use of the Premises on a short-term rental basis to organizations and individuals, or other clients (hereinafter called "Renters"). Lessee, renters and sublessees shall not use the Premises for any purpose other than those specified in the Lease (collectively, the "Permitted Use").

6.1.4 Renters shall be defined as any private or public individuals or firms that desire to rent space at the center for activities and events that are lawful and consistent with the public purposes stated above. The Lessee will market and process all facility rental requests from such Renters. This includes handling and responding to all calls and written requests, booking the dates, providing the staffing to set up and supervise these events as appropriate, and ensuring the facility is returned to an acceptable condition. These rental contracts shall be completed on a rental form approved by Parks. The income received from such rentals may be retained by the Lessee provided that the rental income is used by Lessee only in support of its operation and maintenance of the center, as well as any Parks approved improvements to the facility.

6.1.5 Short term rentals to Renters shall be no more than three consecutive days during rental hours noted in Section 36 and will apply to all space with the exception of the Lessee administrative office, the upstairs attic, and the kitchen area of the Premise.

6.2 Staffing of premises. The Lessee shall provide qualified personnel in sufficient numbers to meet the program staffing needs during all hours of operation. The Lessee shall review the conduct of any of its staff whose activities may be inconsistent with the proper administration of the Premises and take such action as is necessary to fully correct the situation. The Lessee shall engage a licensed agency or company to perform background checks of all staff, both employed and volunteer, before assigning them to work at the Premises. The Lessee shall provide Parks with a written listing of the names and addresses of its staff at the beginning of each calendar year, and notify Parks of changes throughout the year.

Attachment 1

6.3 Board of Trustees. The Lessee shall furnish to Parks a list of names and addresses of each member of its Board of Trustees and its meeting schedule at the beginning of each calendar year, and notify Parks of changes throughout the year. Parks may attend meetings of the Lessee's Board of Trustees, including subcommittee meetings.

6.4 Compliance with Laws; Nondiscrimination.

6.4.1 Lessee shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or for any purpose offensive to the standards of the community. Lessee shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations now in force or hereafter adopted relating to or affecting the condition, use or occupancy of the Premises, provided that Lessee shall not be responsible for maintaining in compliance with laws those portions not within the Premises and as such are the City's responsibility to maintain under terms of this Lease.

6.4.2 Without limiting the generality of Subsection 6.4.1, Lessee agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.

6.5 Liens and Encumbrances. Lessee shall keep the Premises free and clear of, and shall indemnify, defend and hold City harmless from, any and all, liens and encumbrances arising or growing out of any act or omission, or breach of this Lease or its use, improvement or occupancy of the Premises by Lessee or any of its principals, officers, employees, agents or subtenants. Lessee shall inform the City in writing of any lien filed against the Premises within ten (10) days of the filing date of the lien. If any lien is so filed against the Premises, Lessee shall either cause the same to be fully discharged and released of record within ten (10) days after City's written demand therefor or, within such period, provide City with cash or other security acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such necessary, in City's sole discretion.

6.6 Hazardous Substances. Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning and other related supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's

consent, Lessee shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefor, provide evidence satisfactory to City of Lessee's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection 6.6, including City's attorneys' fees and costs, shall be Additional Charges and shall be due and payable to City within ten (10) days after City's demand therefor, if Lessee's violation of this Subsection 6.6 is discovered as a result of such inspection or monitoring.

6.7 Cleanup Costs. Lessee shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both civil and criminal) and costs imposed with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, charges and expenses assessed against, or imposed, upon City (as well as City's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

7. **Utilities**.

7.1 General. Lessee shall pay when due to the appropriate providers, all charges for utilities for the Premises, including but not limited to, electricity, water and sewer services, and data and telecommunications services.

7.2 Refuse Collection; Recycling of Waste Materials. Lessee shall provide all necessary housekeeping and janitorial services for the Premises to a level consistent with other similar Parks facilities and operations and to the Superintendent's reasonable satisfaction. Lessee shall be responsible for proper storage and removal of trash, litter pickup and recycling, consistent with City standards.

7.3 Interruption. City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or

conditions or events beyond City's reasonable control shall be deemed an eviction of Lessee, or to relieve Lessee from any of Lessee's obligations hereunder, or to give Lessee a right of action against City for damages. Lessee acknowledges its understanding that there may be City-planned utility outages affecting the Premises and that such outages may interfere, from time to time, with Lessee's use of the Premises. City shall provide Lessee with not less than forty-eight (48) hours prior written notice of any City-planned electricity outage in the Premises. City has no obligation to provide emergency or backup power to Lessee. The provision of emergency or backup power to the Premises or to enable the equipment therein to properly function shall be the sole responsibility of Lessee. If utilities are interrupted at the Premises so as to render them unfit for their permitted uses, then the Rent for the year shall be abated for the duration of the disruption in the proportion that the number of days of the disruption bears to the number of days of the year.

8. **Licenses and Taxes**.

8.1 Without any deduction or offset whatsoever, Lessee shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes covering the business conducted on the Premises and all personal property taxes and other impositions levied with respect to all personal property located at the Premises; Lessee shall be responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any governmental inspections or examinations relating to Lessee's use and occupancy of the Premises, and pay all taxes on the leasehold interest created by this Lease (*e.g.*, leasehold excise taxes).

8.2 Contests. Lessee shall have the right to contest the amount and validity of any taxes by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving Lessee of its covenant to pay any such taxes. City shall not be subjected to any liability or for the payment of any costs or expenses in connection with any such proceeding brought by Lessee, and Lessee hereby covenants to indemnify and hold City harmless from any such costs or expenses. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

9. **Alterations by Lessee**.

9.1 Lessee shall not make any alterations, additions or improvements in or to the Premises without first submitting to the City professionally prepared plans and specifications for such work and obtaining City's prior written approval thereof. Lessee covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with the City-approved plans and specifications and any conditions imposed by City in connection therewith; (b) is in conformity with first-class, commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises or

any of the Premises' systems; (e) does not disrupt the business or operations of any other occupant of the Premises; (f) is in conformity with all applicable city, state, and federal regulations, including those referenced in Sections 6.5.1 and 6.5.2 and (g) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Lessee shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and reimburse City for any and all expenses incurred in connection therewith. Except as provided in Section 13 with regard to concurrent negligence, Lessee shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of Lessee's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Lessee's breach of its obligations under terms of this Section 9.

9.2 Alterations. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Lessee's moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation: furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, Lessee shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Lease if City specifically so directs, in writing, at the time of City's issuance of its approval thereof. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Lessee shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Lessee. *{add ADA lang here? See CBC}*

10. **Care of Premises**.

10.1 General Obligation. Lessee shall take good care of the Premises and shall reimburse City for all damage done to the Premises that results from any act or omission of Lessee or any of Lessee's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, cracking or breaking of glass.

10.2 Custodial Service for Premises. Lessee shall at its own expense, at all times, keep the Premises and areas immediately adjacent thereto, including the paved exterior walkways and entry ways that surround the perimeter of the building in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving the building and the areas identified in the foregoing sentence clean and presentable. Lessee shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this Lease. Lessee shall be responsible for all services necessary to meet the Lessee's obligation to maintain

the Premises and keep the paved exterior walkways and entry ways that surround the building free of litter and clean of spills resulting from Lessee's operations. Lessee may utilize its own staff to meet this obligation, but shall contract for a professional cleaning service, if in the opinion of the City, such service is necessary to adequately maintain such areas. The Lessee will seek the approval by the City of any such professional cleaning service prior to entering into such arrangement. The City's approval shall not be unreasonably withheld.

10.3 Failure to Comply with Custodial Service Obligation. If, Lessee fails to meet the obligations of Section 10.2, and after City has provided written notice of Lessee's failure to comply with that Section, the City may in its sole discretion, elect to perform said work, or may contract for an outside service. In the event that the City elects to perform the work or contract with an outside service, Lessee shall promptly reimburse the City for its actual and reasonable cost thereof as an Additional Charge.

10.4 Major Repairs. All major repairs necessary to maintain the Premises in a reasonably good operating condition, as determined by City, shall be performed by City at its expense. Major repairs include the structural aspects and exterior of the Premises, the Common Areas, graffiti clean up, and the heating, ventilation, utility, electric and plumbing and other systems and equipment serving the Premises. The foregoing sentence does not extend to maintenance occasioned by an act or omission of Lessee or its officers, agents, employees, or contractors. Except in the event of City's gross negligence or intentional misconduct, there shall be no abatement or reduction of rent arising by reason of City's making of repairs, alterations or improvements.

10.5 Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without City's Consent. City reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. Lessee shall not install on or integrate into, or permit any other person or entity to install on or integrate into, the Premises any such work of visual art without City's prior, express, written consent. City's consent to the installation of any such art work may be granted upon one or more conditions, or withheld at the City's discretion.

10.6 Lessee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990. Lessee shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 10.5 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended;

by Lessee or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

11. **Signs and Advertising**.

11.1 Signs, Generally. Lessee shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises, without the Superintendent's prior written consent. Lessee shall remove all signage at the expiration or earlier termination of this Lease and repair any damage or injury to the Premises, unless the City authorizes in writing to the Lessee that such signage may be left in place.

11.2 On-Premises Signs. Lessee may install approved permanent exterior signage. Temporary signs or banners not more than twenty-four (24) square feet in size may be displayed on or about the Premises to advertise a special event beginning two (2) weeks immediately before the event advertised, through the conclusion of such event. New exterior signage shall include the Premises' name, Lessee's name and the Parks logo and shall be constructed in a style and size consistent with the Parks sign policy. Preexisting internal and external signage that has been installed prior to the execution of this lease are exempt from the requirements of this section 11.2.

11.3 Recognition. Lessee shall include a statement and the Parks logo in its printed materials stating, in effect, that: "We would like to thank Seattle Parks and Recreation for providing a location for Lake City Community Center."

12. **Surrender of Premises**.

12.1 General Matters. At the expiration or sooner termination of the Lease Term, Lessee shall return the Premises to City in the same condition in which received on the Commencement Date and agreed upon by both parties pursuant to Section 2.2 of this Lease (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by City pursuant to Section 9), reasonable wear and tear, casualty and condemnation damages not resulting from or contributed to by negligence of Lessee, excepted. Prior to such return, Lessee shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises, and shall repair any damage resulting from their removal. In no event shall Lessee remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; or floor, window or wall coverings, unless otherwise specifically directed by City in writing at the time when City's approval of their installation is issued. Lessee's obligations

under this Section 12 shall survive the expiration or termination of this Lease. Lessee shall indemnify City for all damages and losses suffered as a result of Lessee's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

12.2 Cable and Wiring. Notwithstanding any provision to the contrary in this Lease and if the City so directs, on or by the Expiration Date, or if this Lease is terminated before the Expiration Date, within fifteen (15) days after the effective termination date, whichever is earlier, Lessee shall remove all voice and data communication and transmission cables and wiring installed by or for Lessee to serve any telephone, computer or other equipment located in that portion of the Premises. Cables and wiring shall include all of the same located within the interior and exterior walls, through or above the ceiling, through or below the floor, vertical or horizontal risers, raceways, conduits, channels, or connection openings of such portion of the Premises to be vacated and surrendered to City as of the Expiration Date or earlier termination date. Lessee shall leave the mud rings, face plates and floor boxes in place.

13. **Waiver; Indemnification**.

13.1 Lessee's Indemnification. Except as otherwise provided in this section, Lessee shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors, and other occupants of the Premises harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Lessee's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (ii) Lessee's breach of its obligations hereunder, or (iii) any act or omission of Lessee or any subtenant, licensee, assignee or concessionaire of Lessee, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises.

Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide City with a full and complete indemnity from claims made by Lessee and its employees, to the extent of their negligence. Lessee shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 13.**

Attachment 1

13.2 Lessee's Release of Claims. Lessee hereby fully and completely waives and releases all claims against City to the extent a loss or damage is covered by insurance for any losses or other damages sustained by Lessee or any person claiming through Lessee resulting from any accident or occurrence in or upon the Premises, including but not limited to any defect in or failure of Building equipment; any failure to make repairs; any defect, failure, surge in, or interruption of Building facilities or services; any defect in or failure of Common Areas; broken glass; water leakage; the collapse of any Building component; or any act, omission or negligence of co-tenants, licensees or any other persons or occupants of the Premises.

13.3 Limitation of Lessee's Indemnification. In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which City or Lessee (the "Indemnitor") agrees to indemnify the other (the "Indemnitee") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Premises, (i) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnitee or the Indemnitee's agents or employees, and (b) the Indemnitor or the Indemnitor's agents or employees, shall apply only to the extent of the Indemnitor's negligence; PROVIDED, HOWEVER, the limitations on indemnity set forth in this section shall automatically and without further act by either City or Lessee be deemed amended so as to remove any of the restrictions contained in this section no longer required by then applicable law.

13.4 City's Release of Claims. City hereby fully and completely waives and releases all claims against Lessee to the extent a loss or damage is caused by City's negligence, willful misconduct or breach of this Lease.

14. **Insurance**.

14.1 Minimum Insurance to be Secured and Maintained. Prior to the Commencement Date, Lessee shall secure and shall thereafter maintain (or cause its Subtenant(s) to secure and maintain) in full force and effect, at no expense to City, and throughout the entire Lease Term, insurance as specified below:

14.1.1 Commercial General Liability Insurance including:

Attachment 1

Premises/Operations Liability
Products/Completed Operations Liability
Personal/Advertising Liability
Contractual Liability
Stop Gap/Employers Contingent Liability
Independent Contractors Liability
Liquor Liability/Host Liquor Liability
Fire Damage Legal Liability

Such policy (ies) must be endorsed as provided in Subsection 14.3.1.2 hereof and provide the following minimum limits:

$1,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage

$1,000,000 each Offense Personal and Advertising Injury

$100,000 each Occurrence Fire Legal Liability

$1,000,000 each Accident/ Disease - Each Employee Stop Gap

14.1.2 **Business Automobile Liability** including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of $1,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage

14.1.3 **Workers' Compensation** securing Lessee's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington; provided, that if Lessee is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Lessee shall certify that qualification by a letter that is signed by a corporate officer of Lessee and delivered to City that sets forth the limits of any policy of excess insurance covering its employees; and

14.1.4 **Property Insurance** under which the Lessee's furniture, fixtures, equipment and inventory and all alterations, additions and improvements that Lessee makes to the Premises are insured throughout the Lease Term in an amount equal to the replacement cost thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss, not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises; (iv) loss from business interruption or extra expense,

with sufficient coverage to provide for the payment of rent and other fixed costs during any interruption of Lessee's business. City shall be named as a loss payee as respects property insurance covering alterations, additions and improvements under such policy.

City shall insure the Premises and City's furniture, fixtures, equipment and inventory (exclusive of Lessee's furniture, fixtures, equipment and inventory and all alterations, additions and improvements that Lessee makes to the Premises) in an amount equal to the replacement cost thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss, not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; and (iii) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises.

14.2 General Requirements Regarding Lessee's Insurance.

14.2.1 The insurance required by Subsections 14.1.1 and 14.1.2 shall be endorsed to include the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds. The insurance required by Subsections 14.1.1 and 14.1.2 shall be primary as respects City; shall provide that any other insurance maintained by City shall be excess and not contributing insurance with Lessee's insurance; and shall provide that such coverage shall not be reduced or canceled without forty-five (45) days' prior written notice to City, except ten (10) days prior written notice to City with respect to non-payment of premium, at its address as specified in Subsection 1.7 hereof.

14.2.2 All insurance policies required hereunder shall be subject to reasonable approval by City's Risk Manager as to company, form and coverage. All policies shall be issued by a company rated A–:VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington surplus lines broker.

14.2.3 Any deductible or self-insured retention in excess of $2,500 must be disclosed to, and shall be subject to reasonable approval by, City's Risk Manager. The cost of any claim payments falling within the deductible shall be the responsibility of Lessee.

14.2.4 Coverage and/or limits may be reasonably altered or increased as necessary to reflect type of or exposure to risk. City shall have the right to periodically review the appropriateness of such coverage and limits in view of inflation and/or changing industry conditions and to require an increase in such coverage or limits upon ninety (90) days' prior written notice.

Attachment 1

14.3 Evidence of Insurance. The following documents must be delivered to City at its address as specified in or pursuant to Subsection 1.7 hereof, as evidence of the insurance coverage secured and maintained by Lessee:

14.3.1 On or before the Commencement Date, and thereafter, not later than five (5) days prior to the expiration or renewal date of each such policy:

14.3.1.1 A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;

14.3.1.2 A copy of the endorsement naming the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;

14.3.1.3 A copy of an endorsement stating that the coverages provided by such policy to City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to City, except ten (10) days prior written notice to City with respect to non-payment of premium, at its address as specified in or provided pursuant to Subsection 1.7 hereof; and

14.3.1.4 For the Commercial General liability and Business Automobile insurance to be secured and maintained pursuant to Subsection 14.1.1 and 14.1.2 hereof, a copy of the "Separation of Insureds" or "Severability of Interests" clause in such policy.

14.3.2 Pending receipt of the documentation specified in this Section 14, Lessee may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

14.4 Reconstruction Following Loss. Lessee shall proceed with reasonable diligence as soon as sufficient funds are available therefor, to prepare plans and specifications for, and thereafter to carry out, all work necessary to repair and restore the alterations, additions and improvements that Lessee made to the Premises that is at least equivalent to, or more suitable than, the alterations, additions and improvements that were damaged or destroyed.

14.5 Assumption of Risk. The placement and storage of its personal property in the Premises shall be the responsibility, and at the sole risk, of Lessee.

Attachment 1

15. **Assignment or Sublease.**

15.1 Lessee shall not sublet or encumber the whole or any part of the Premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without the prior written consent of City, whose consent shall be given or withheld in its sole discretion. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. Any assignment or sublease, without City's prior written consent, at City's option, shall be void. No assignment or sublease shall release Lessee from primary liability hereunder. Each assignment and sublease shall be by an instrument in writing in form satisfactory to City. If Lessee is a corporation, then any transfer of this Lease by merger, consolidation or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, Lessee's outstanding voting stock, shall constitute an assignment for the purposes of this Lease. If Lessee is a partnership, then a change in general partners in, or voting or decision-making control of, the partnership shall also constitute an assignment. This provision does not preclude Lessee from subcontracting out for routine maintenance and programming services.

16. **Assignment by City**. If City sells or otherwise transfers the Premises, or if City assigns its interest in this Lease, such purchaser, transferee, or assignee thereof shall be deemed to have assumed City's obligations under this Lease arising after the date of such transfer, and City shall thereupon be relieved of all liabilities under this Lease arising thereafter, but this Lease shall otherwise remain in full force and effect. Lessee shall attorn to City's successor, which assumes and agrees to perform all of City's obligations under this Lease.

17. **Destruction**. If the Premises are rendered partially or totally untenantable by fire or other casualty, and if the damage is repairable within twenty-four (24) months from the date of the occurrence, then if insurance proceeds or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts) City shall repair the Premises with due diligence; otherwise City may elect to terminate this Lease. Rent and Additional Charges shall be abated in the proportion that the untenantable portion of the Premises bears to the whole thereof, as the City determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired within twenty-four (24) months from the date of the occurrence, City or Lessee may terminate this Lease upon sixty (60) days' written notice to the other. If thirty percent (30%) or more of the Building is destroyed or damaged, then regardless of whether the Premises are damaged or not, Lessee may elect to terminate this Lease upon written notice to City. City shall advise Lessee of City's election to terminate by giving notice to Lessee thereof within thirty (30) days after the occurrence. In the event of damage by casualty, Lessee shall, at its sole cost and expense, repair all damage to its own personal property. Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Lessee for damages, compensation or other sums

for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Premises.

18. **Eminent Domain**.

18.1 Taking. If all of the Premises are taken by Eminent Domain, this Lease shall terminate as of the date Lessee is required to vacate the Premises and all Rent and Additional Charges shall be paid to that date. The term "Eminent Domain" shall include the taking or damaging of property by, through or under any governmental or statutory authority, and any purchase or acquisition in lieu thereof, whether the damaging or taking is by government or any other person. If a taking of any part of the Premises by Eminent Domain renders the remainder thereof unusable for the business of Lessee, in the reasonable judgment of City, the Lease may, at the option of either party, be terminated by written notice given to the other party not more than thirty (30) days after City gives Lessee written notice of the taking, and such termination shall be effective as of the date when Lessee is required to vacate the portion of the Premises so taken.

If this Lease is so terminated, all Rent and Additional Charges shall be paid to the date of termination. Whenever any portion of the Premises is taken by Eminent Domain and this Lease is not terminated, City, at its expense, shall proceed with all reasonable dispatch to restore, to the extent of available proceeds and to the extent it is reasonably prudent to do so, the remainder of the Premises to the condition they were in immediately prior to such taking, and Lessee, at its expense, shall proceed with all reasonable dispatch to restore its personal property and all improvements made by it to the Premises to the same condition they were in immediately prior to such taking, to the extent award is available therefor. The Rent and Additional Charges payable hereunder shall be reduced from the date Lessee is required to partially vacate the Premises in the same proportion that the Rentable Area taken bears to the total Rentable Area of the Premises prior to taking.

18.2 Award. Except as otherwise provided below, City reserves all rights to the entire damage award or payment for any taking by Eminent Domain, and Lessee waives all claim whatsoever against City for damages for termination of its leasehold interest in the Premises or for interference with its business. Lessee hereby grants and assigns to City any right Lessee may now have or hereafter acquire to such damages and agrees to execute and deliver such further instruments of assignment as City, from time to time, may request. Lessee, however, shall have the right to claim from the condemning authority all compensation that may be recoverable by Lessee on account of any loss incurred by Lessee in moving Lessee's merchandise, furniture, trade fixtures and equipment and the cost of restoring its personal property and improvements made by it to the Premises.

19. **Default by Lessee**.

Attachment 1

19.1 Definition. If Lessee violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Lease; or if Lessee files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Lessee's assets or if Lessee makes an assignment for the benefit of creditors, or if Lessee is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; then Lessee shall be deemed in default ("Default").

19.2 City Remedies. If Lessee has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within thirty (30) days after written notice thereof has been provided to Lessee, then City shall have the following nonexclusive rights and remedies at its option: (1) to cure such default on Lessee's behalf and at Lessee's sole expense and to charge Lessee for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (2) to terminate this Lease; provided, however, that if the nature of Lessee's obligation (other than monetary obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for performance, then Lessee shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

19.3 Reentry by City Upon Termination. Upon the termination of this Lease, City may reenter the Premises, take possession thereof, and remove all persons therefrom, for which actions Lessee shall have no claim thereon or hereunder. Lessee shall be liable and shall reimburse City upon demand for all actual and reasonable costs and expenses of every kind and nature incurred in retaking possession of the Premises. If City retakes the Premises, City shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at any place selected by City, including a public warehouse, at the expense and risk of Lessee. City shall have the right to sell such stored property, after reasonable prior notice to Lessee or such owner(s), after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first, to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from Lessee to City; the balance, if any, shall be paid to Lessee.

19.4 Vacation or Abandonment. If Lessee vacates or abandons the Premises in their entirety and fails to reoccupy them within thirty (30) days after City (1) delivers a notice to Lessee's notice address set forth in Section 1.8 above demanding such reoccupancy and (2) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing, Lessee shall be in default under this Lease.

19.5 City's Non-exclusive Remedies upon Termination due to Default of Lessee. Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the

termination of this Lease due to the Default of Lessee, the liability of Lessee for all sums due under this Lease provided herein shall not be extinguished for the balance of the Term of this Lease. Lessee shall also be liable to City for any other amount (excluding consequential or specific damages) necessary to compensate City for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others for the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted by the laws of the State of Washington. The provisions of this Subsection 19.5 shall survive the expiration or earlier termination of this Lease.

20. **City's Remedies Cumulative; Waiver**. City's rights and remedies hereunder are not exclusive, but cumulative, and City's exercise of any right or remedy due to a default or breach by Lessee shall not be deemed a waiver of, or deemed to alter, affect or prejudice any other right or remedy that City may have under this Lease or by law or in equity. Neither the acceptance of rent nor any other act or omission of City at any time or times after the happening of any event authorizing the cancellation or forfeiture of this Lease shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive City of its right to cancel or forfeit this Lease, upon the written notice provided for herein, at any time that cause for cancellation or forfeiture may exist, or be construed so as to estop City at any future time from promptly exercising any other option, right or remedy that it may have under any term or provision of this Lease.

21. **Default by City.** City shall be in default if City fails to perform its obligations under this Lease within thirty (30) days after its receipt of notice of nonperformance from Lessee; provided, that if the default cannot reasonably be cured within the thirty (30) day period, City shall not be in default if City commences the cure within the thirty (30) day period and thereafter diligently pursues such cure to completion. Upon City's default, Lessee may pursue any remedies at law or in equity that may be permitted by the laws of the State of Washington.

22. **Termination for Convenience**. Notwithstanding anything else in this Lease to the contrary, the City may, at any time and without liability of any kind to Lessee, terminate this Lease upon thirty (30) days' written notice to Lessee if the City determines that the Premises are required for a different public purpose.

23. **Attorneys' Fees**. If either party retains the services of an attorney in connection with enforcing the terms of this Lease, each party agrees to bear its own attorneys' fees and costs.

24. **Access by City**. City and its agents shall have the right to enter the Premises at any reasonable time to examine the same, and to show them to prospective purchasers, lenders or

tenants, and to make such repairs, alterations, improvements, additions or improvements to the Premises as City may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefor, except in the event of City's gross negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon City any duty of repair or other obligation not specifically stated in this Lease. Lessee shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

25. **Holding Over**. Unless otherwise agreed in writing by the parties hereto, any holding over by Lessee after the expiration of the Lease Term, whether or not consented to by City, shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein. Either party may terminate any holdover tenancy by written notice delivered to the other party not later than twenty (20) days prior to the end of the final month. If Lessee fails to surrender the Premises upon the expiration or termination of this Lease without City's written consent, Lessee shall indemnify, defend and hold harmless City from all losses, damages, liabilities and expenses resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure. Lessee's obligations under this paragraph shall survive expiration or termination of this Lease.

26. **Notices**. Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsections 1.7 and 1.8 hereof by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as above provided. Notices shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the earlier of the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to subsection (c), forty-eight (48) hours following deposit in the U.S. mail.

27. **Successors or Assigns**. All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 15 and 16, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

Attachment 1

28. **Authority and Liability**. Lessee warrants that this Lease has been duly authorized, executed and delivered by Lessee, and that Lessee has the requisite power and authority to enter into this Lease and perform its obligations hereunder. Lessee covenants to provide City with evidence of its authority and the authorization of this Lease upon request. All persons and entities named as Lessee herein shall be jointly and severally liable for Lessee's liabilities, covenants and agreements under this Lease.

29. **Partial Invalidity**. If any court determines that any provision of this Lease or the application hereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

30. **Force Majeure**. Neither City nor Lessee shall be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to any cause beyond its reasonable control, including, but not limited to an act of Nature, act of civil or military authority, fire, flood, windstorm, earthquake, strike or labor disturbance, civil commotion, delay in transportation, governmental delay, or war; provided, however, that the foregoing shall not excuse Lessee from the timely payment of Rent and Additional Charges due hereunder, when due.

31. **Counterparts**. This parties may execute this Lease in counterparts, which, taken together, constitute the entire Lease.

32. **Headings**. The section headings used in this Lease are used for purposes of convenience and do not alter in any manner the content of the sections.

33. **Context**. Whenever appropriate from the context, the use of any gender shall include any other or all genders, and the singular shall include the plural, and the plural shall include the singular.

34. **Execution by City and Lessee; Effective Date**. Neither City nor Lessee shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between City and Lessee until all parties hereto have executed this Lease and the appropriate legislative authority approves it. This Lease shall become effective on the date (the "Effective Date") on which this Lease is executed by City and Lessee and approved by the Seattle City Council and signed by the Mayor. City shall have no liability to Lessee and shall have the right to terminate this Lease upon written notice to Lessee if this Lease is legislatively disapproved.

Attachment 1

35. **Time of Essence; Time Calculation Method**. Time is of the essence with respect to this Lease. Except as otherwise specifically provided, any reference in this Lease to the word "day" means a "calendar day"; provided, however, that if the final day for any action required hereunder is a Saturday, Sunday or City holiday, such action shall not be required until the next succeeding day that is not a Saturday, Sunday or City holiday. Any reference in this Lease to the word "month" means "calendar month."

36. **Continuous Operation**. Lessee shall keep the Premises open and use them to transact business with the public daily during hours as designated below or as otherwise may be designated by the Superintendent. Subject to the Superintendent's prior reasonable approval, Lessee may, upon posting a written notice to the public of not less than one (1) week in duration prior to any approved closure, close the Premises or a portion thereof for a reasonable period for repairs or any approved remodeling, or for taking inventory. Lessee shall close to accommodate reasonable operational requirements of City's business, upon thirty (30) days' prior written notice to Lessee, and Lessee shall immediately close in the case of any emergency as determined by the Superintendent; provided, however, that if Lessee shall close pursuant to this sentence at the direction of City, and if Lessee remains closed at the direction of City for more than three (3) days, then Lessee's Rent and Additional Charges shall be prorated for the duration of the closure in the proportion that the number of days of the closure bears to the number of days of the month. Lessee shall furnish an approved sign at the Premises entrance advising the public of any approved closure, unless closed at the direction of City.

Approved hours of operation of the business conducted on the Premises are as follows:

Monday through Friday—regular office hours	9:00AM	4:00PM
Monday through Friday—other rooms of facilities available for programs and rentals per Exhibit B to Attachment 1	9:00AM	11:59PM
Saturday and Sundays	By appointment	By appointment

37. **Standards**. Lessee recognizes that, although it is operating its facilities as an independent operator, Parks is organized and exists for the purpose of maintaining park and recreation facilities for the use and enjoyment of the general public. Lessee, its agents and employees, will devote their efforts toward rendering courteous service to the public as though they were employees of the City, with a view of adding to the enjoyment of the patrons of this recreational facility. Lessee shall operate and conduct the facilities on the Premises in a businesslike manner, and will not permit any conduct on the part of Lessee's employees, which

would be detrimental to City's operations.

37.1 Relationship. Notwithstanding the foregoing, in no event shall the City be construed or held to have become in any way or for any purpose a partner, associate, or joint venturer of Lessee or any party associated with Lessee in the conduct of Lessee's business or otherwise. This Lease does not make Lessee the agent or legal representative of the City for any purpose whatsoever.

38. **City's Control of Premises and Vicinity**. All common and other facilities provided by City in or about the Premises are subject to the City's exclusive control and management by City. Accordingly, City may do any and all of the following (among other activities in support of Parks or other municipal objectives), all without incurring any liability whatsoever to Lessee:

38.1 Change of Vicinity. City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, landscaping, exhibit, service area, and parking areas in the vicinity of the Premises;

38.2 Traffic Regulation. City may regulate all traffic within and adjacent to the Premises, including the operation and parking of vehicles of Lessee and its invitees, employees, and patrons.

38.3 Display of Promotional Materials. City may erect, display, and remove promotional exhibits and materials and permit special events on property adjacent to and nearby the Premises.

38.4 Promulgation of Rules. City may promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any Department property including, but not limited to, the Premises.

38.5 Change of Businesses. City may change the size, number, type and identity of concessions, stores, businesses and operations being conducted or undertaken in the vicinity of the Premises.

39. **Lessee's Records**. Lessee shall maintain books, records, documents, and other evidence of accounting procedures and practices, including a statement of income and expenses for the recent calendar year, which reflect all direct and indirect income and fees collected by the Lessee as well as any costs incurred by the Lessee in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by the City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract. Lessee shall retain all books of accounting and any other information that will affect the determination of Rent and Additional Charges for a period of six (6) years

after expiration or termination of this lease, and Lessee shall make them available for the inspection at Lessee's office within ten (10) days of City's prior written demand therefore. Each quarter of each year during the Term, Lessee shall provide the City with a written report of income and expenses, on a form provided by the Department.

40. **COMPLIANCE WITH LAW:**

A. Applicable Law:
Lessee agrees to comply with all applicable laws of the United States of America and the State of Washington, and with the Charter and ordinances of The City of Seattle, as well as all rules and regulations of all such governmental entities.

B. Licenses, Permits and Taxes:
Lessee shall pay all fees and taxes covering the business conducted on the Premises and Improvements and Lessee's personal and business property and fixtures thereon.

C. Equal Employment Opportunity and Nondiscrimination:
Lessee shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code, as may be amended from time to time, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

41. Miscellaneous.

40.1 Entire Lease; Applicable Law; Venue. This Lease and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of City and Lessee concerning the Premises, and there are no other agreements or understanding, oral or written, between City and Lessee concerning the Premises. Any subsequent modification or amendment of this Lease shall be binding upon City and Lessee only if reduced to writing and signed by them. This Lease shall be governed by, and construed in accordance with the laws of the State of Washington. The venue for any action under this Lease shall be King County Superior Court.

40.2 Negotiated Lease. The parties to this Lease acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Lease reviewed by their respective legal counsel, and that the terms and conditions of this Lease are not to be construed against any party on the basis of such party's draftsmanship thereof.

Attachment 1

40.3 Periodic Lease and Operations Evaluation. A periodic evaluation of the lease and operations of the premises may be conducted. A mid-term evaluation shall be conducted on or around July 2015. The evaluation will review and assess the suitability of this lease agreement and the Lessee's implementation of the terms of the lease. This will be a collaborative review between Parks and the Lessee. The result of the evaluation will be an assessment of the status of programs and operations, accomplishments to date, an exchange of feedback between the two parties, and recommendations for changes/improvements. The results of this evaluation may serve as the basis for renegotiation of part, or all of this lease agreement.

40.4 Disputes. In the event of any dispute or difference that shall arise between the parties relating to the construction, meaning or effect of this Lease, or of the right or liabilities of the parties hereunder, the parties shall first follow the procedures in this section before filing or initiating a lawsuit. The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, the matter shall be referred to the Superintendent of the City's Park and Recreation Department and the Executive Director of the LESSEE organization. If those officials are unable to resolve the dispute within a period of fifteen (15) days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute. LESSEE Parties and City agree to participate in mediation with the agreed upon mediator for a reasonable amount of time and in good faith. The cost of the mediation shall be shared equally between LESSEE Parties and City.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year indicated below.

CITY:	**LESSEE:**
THE CITY OF SEATTLE	**LAKE CITY COMMUNITY CENTER** A Washington nonprofit corporation
By: _____ Print Name/Title:_____ Department of Parks and Recreation	By: _____ _____ _____

STATE OF WASHINGTON)
) ss. (Acknowledgement for City)
COUNTY OF KING)

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the Department of Parks and Recreation of **THE CITY OF**

Attachment 1

SEATTLE, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

_____ _____
[Signature] *[Printed Name]*

NOTARY PUBLIC in and for the State of Washington residing at _____
My commission expires _____.

STATE OF WASHINGTON)
) ss. (Acknowledgement for _____)
COUNTY OF KING)
On this _____ day of _____, 20__, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____of _____, the entity that executed the foregoing instrument as _____; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

WITNESS my hand and official seal the day and year in this certificate above written.

_____ _____
[Signature] *[Printed Name]*

NOTARY PUBLIC in and for the State of Washington residing at _____.
My commission expires _____.

EXHIBIT A to Attachment 1

<u>Legal Description</u>

Real property in King County, Washington, to wit:

The S. 30 feet of Lot 3 and all of Lots 4 and 5; the W. half of Lot 13, and all Lots 14, 15, and 16, Block 7, Kenwood Division Two, according to Plat recorded in Vol. 21 of Plats, page 28, Records of the Auditor's Office of King County, State of Washington.

EXHIBIT B to Attachment 1

RECREATIONAL ACTIVITIES, SERVICES, AND PROGRAMMING FOR COMMUNITY CENTERS

The City of Seattle, Department of Parks and Recreation and the North Seattle Chamber of Commerce (NSCC) will explore opportunities with other community-based organizations and agencies to provide a wide range of recreational activities and programming to the community.

In addition, to the best effort possible, and commensurate with available funds, NSCC shall incorporate any relevant requirements, programs, and services that result from the recommendations of the Lake City Core Development Interdepartmental Team (IDT) into its programming. Any such programming shall be submitted in advance of implementation for Parks review and approval. The IDT recommendations will be made a part of the terms and conditions of this long-term agreement between NSCC and Parks.

Following is a list of recreational activities and programming for Seattle's Department of Parks and Recreation community centers. This list is not exhaustive, and not all items apply to every center. Community Centers are expected to provide a diversity of programs and activities for the communities served. Some programs/activities may require participants to pay a nominal fee.

Community Center Participants:

- Children and Youth
- Adults
- Seniors
- Persons with physical or mental disabilities
- Ethnic and cultural groups in the neighborhood

Activities and Programs (as applicable):

- Arts Crafts, Hobbies and Cultural Programs
- Camps
- Day care/preschool centers
- Educational Programs
- Events and Meetings
- Environmental Education and Programs
- Fitness, Health, and Wellness Programs
- General Interest
- Inclusive Recreation
- Outdoor Education & Adventure Programs
- Parties and Special Events

- Performing and Visual Arts Programs
- Social Clubs and Activities (Youth, Adult, Senior, Ethnic Groups)
- Sports and Athletics Programs
- Volunteer & Outreach Programs
- Youth Before and After-School Programs
- Childcare
- Senior Programs
- Group Rentals and Private Events
- Promotion of the community center via a website, links to community websites, social, email marketing, USPS mailings, etc.

Fundraising activities: Defined as only those activities sponsored by the Lessee that provide funding to support its operation and maintenance of the facility.

NSCC shall develop and implement a formal fundraising plan that supports:

- Modern Business Systems
- Website and Internet Presence
- Interior Updates and Improvements
- Deferred Maintenance Projects
- Increased Staffing
- Expanded Youth and Senior Programming
- Culturally Diverse Programming and Events
- Promotion of Rental Space
- The programs, services, activities and participants listed above

Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Suzanne Simmons / 684-8003	Jeff Muhm/684-8049

Legislation Title:

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into a lease agreement with the North Seattle Chamber of Commerce for the purpose of providing recreational and community programs to the public at the City of Seattle's Lake City Community Center.

Summary of the Legislation: The proposed legislation authorizes the Superintendent of Parks and Recreation to enter into a **five-year** lease agreement with the North Seattle Chamber of Commerce (NSCC). Under the terms of the lease agreement, NSCC will operate the Lake City Community Center (Center) as a recreational and community program facility open to, and available for, public use. The proposed agreement includes an option to extend the lease for another five years at the mutual consent of both parties.

Background: The Seattle Lake City Lions Club built the original Lake City Community Center building in 1955 to create recreational opportunities for youth. In 1964, Seattle Department of Parks and Recreation (Parks) accepted the Center and adjacent property as a gift from the Lions Club with the condition that improvements would be made to the building and the facility would be used as a public recreation center (Ordinance 92885). In 1980, Parks expanded the Lake City Community Center to its current size of 15,000 square feet, at a cost of $70,000 using King County Forward Thrust Bond funds. The Lake City Lions Club incorporated as the Lake City Community Center Inc., a 501(c)3 organization, and from 1965-2012 was contracted by Parks to provide recreational and programming services to the public at the Center. In 2012, Parks conducted an RFP process for operation of the Lake City Community Center. The North Seattle Chamber of Commerce was selected as the winning bidder. Parks is proposing this legislation to execute an agreement with NSCC that will ensure that the operation and programming of the Center will continue for the next five years.

____ **This legislation does not have any financial implications.**

_X_ **This legislation has financial implications.**

Appropriations: N/A

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**

Appropriations Notes:

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
Parks and Recreation Fund (10200)	Parks and Recreation	Income from Concession Fee Payments	$500	$500
TOTAL			**$500**	**$500**

Revenue/Reimbursement Notes: This lease requires NSCC to pay $500 annually for the first two years of operation, and $1,000 annually thereafter for the duration of the term of the lease. In addition, NSCC must demonstrate the level of benefits provided to the public on an annual basis. Historically, the facility operator has provided significant in-kind maintenance services and some capital investments to the facility. NSCC will continue to do so under the terms of the proposed lease.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact: N/A

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

Position Notes:

Do positions sunset in the future?
N/A

Spending/Cash Flow: N/A

Fund Name & #	Department	Budget Control Level*	2013 Expenditures	2014 Anticipated Expenditures
TOTAL	N/A	N/A	N/A	N/A

Spending/Cash Flow Notes:

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?** No.

b) **What is the financial cost of not implementing the legislation?**
Parks would forego $4,000 in revenue over the five year term of the lease. There would also be the loss of the program services that are being provided to the public. It would be costly for Parks to begin operating and maintaining the facility. There are currently no funds available in the Parks budget to do so.

c) **Does this legislation affect any departments besides the originating department?** No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
Another organization could be sought to operate the facility. However, as a result of the RFP process, at this time there are none known that have the qualifications to provide the same programs and services as provided in the proposed lease with NSCC.

e) **Is a public hearing required for this legislation?** No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No.

g) **Does this legislation affect a piece of property?** Yes. See Attachment B, Map.

h) **Other Issues:** None.

List attachments to the fiscal note below:

Attachment A: Contract Summary – North Seattle Chamber of Commerce
Attachment B: Map – Lake City Community Center

Attachment A
Seattle Department of Parks and Recreation

CONTRACT SUMMARY

Contracting Party/ Lessee/ Concessionaire/Other: _North Seattle Chamber of Commerce

Contract Title and Contract Type: _Lease Agreement

Non-Profit __X_ **or For Profit**_____

New__X___ or **Renewal (or extension of existing Lease)** _____

Premises: ___Lake City Community Center_____

Term of Lease: 5 years + 5 year renewal option

Purpose of Lease (description of license): North Seattle Chamber of Commerce leases the building to provide recreational and community programs and rental services.

Rent: $500 annually for the first two years, $1,000 annually thereafter during term of agreement, plus on-site building management and a provision requiring the Lessee to deliver community programs and services to the public.

Adjustments to Rent (if any): Not applicable.

Public Benefit (e.g., description of permitted use): North Seattle Chamber of Commerce will provide recreation and community programs for the public similar to Parks-managed community centers, and will manage facility rentals.

Maintenance: Seattle Parks and Recreation is responsible for major maintenance, including exterior walls and roof, surrounding park and parking lots. The North Seattle Chamber of Commerce is responsible for routine interior maintenance.

Other Pertinent Information: The Seattle Lake City Lions Club built the original Lake City Community Center building in 1955 to create recreational opportunities for youth. In 1964, Parks accepted the Center and adjacent property as a gift from the Lions Club with the condition that improvements would be made to the building and the facility would be used as a public recreation center. The Lions operated the facility until 2012 when Parks issued the RFP that resulted in the proposed lease to the North Seattle Chamber of Commerce.

Attachment B
Map – Lake City Community Center
12531 28th Avenue NE, Seattle, WA 98125

Start Address (e.g. 123 Main St.) Swap Start/End

End: Lake City Community Center
12531 28th Ave NE, Seattle, WA 98125 Get Directions

City of Seattle
Office of the Mayor

September 3, 2013

Honorable Sally Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that authorizes a five-year lease agreement between the City of Seattle and the North Seattle Chamber of Commerce (NSCC), with an option for an additional five year term at the Superintendent's discretion. Under the terms of the lease, NSCC will manage Seattle's Lake City Community Center and provide youth, adult and senior programs to the public at the facility.

In April 2012, the Department of Parks and Recreation (DPR) completed a Request for Proposal (RFP) process to select an operator for the Lake City Community Center. There were three respondents to the RFP, of which NSCC was selected as the top candidate to manage the center. NSCC is a respected and successful non-profit organization supported by the Lake City community. Approval of this lease will ensure that NSCC has the opportunity to develop and provide services and programs at the Center for the next five years. Additionally, NSCC will schedule all rentals and special events at the facility. In exchange for the right to manage the Lake City Community Center, NSCC will provide routine maintenance, necessary insurance, programming services, and a financial payment to the City of $4,000 – over the term of the lease.

Thank you for your consideration of this legislation. Should you have questions, please contact Suzanne Simmons at 684-8003.

Sincerely,

Michael McGinn
Mayor of Seattle

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov